

HOUSE BILL NO. 653

INTRODUCED BY BECKER

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A TIME LIMITATION FOR FILING CERTAIN CLAIMS WITH THE MONTANA INSURANCE GUARANTY ASSOCIATION; AMENDING SECTION 33-10-105, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 33-10-105, MCA, is amended to read:

"33-10-105. General powers and duties. (1) The Subject to subsection (2), the association:

(a) (i) is obligated to the extent of the covered claims existing prior to the determination of insolvency and arising within 30 days after the determination of insolvency or before the policy expiration date if less than 30 days after the determination or before the insured replaces the policy or causes its cancellation if the insured does so within 30 days of the determination;

(ii) is obligated under subsection (1)(a)(i) only for that amount of each covered claim that is in excess of \$100 and is less than \$300,000, except that:

(A) the association shall pay an amount not exceeding \$10,000 per policy for a covered claim for the return of unearned premium; and

(B) the association shall pay the full amount of any covered claim arising out of a workers' compensation policy; and

(iii) is not obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises;

(b) is considered the insurer to the extent of its obligation on the covered claims and to that extent has all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent;

(c) shall investigate claims brought against the association and adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims and may review settlements, releases, and judgments to which the insolvent insurer or its insureds were parties to determine the extent to which the settlements, releases, and judgments may be properly contested;

(d) shall notify persons as the commissioner directs under 33-10-109(2)(a), including the department

1 of labor and industry for workers' compensation claims;

2 (e) shall handle claims through its employees or through one or more insurers or other persons
3 designated as servicing facilities. Designation of a servicing facility is subject to the approval of the
4 commissioner, but the designation may be declined by a member insurer.

5 (f) shall reimburse each servicing facility for obligations of the association paid by the facility and for
6 expenses incurred by the facility while handling claims on behalf of the association and shall pay the other
7 expenses of the association authorized by this part.

8 (2) (a) Except as provided in subsection (2)(b), a covered claim may not include a claim filed with the
9 association or a liquidator for protection under the insured's policy for losses incurred but not reported and may
10 not include a claim filed with the association after the earlier of:

11 (i) 36 months after the date of the order of liquidation; or

12 (ii) the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent
13 insurer.

14 (b) (i) If the claimant learns that the claimant's condition resulted from an occupational disease
15 compensable under Title 39, chapter 72, within 36 months of the order of liquidation or the final date set by the
16 court for the filing of claims against the liquidator, the claimant shall file a claim, which must be paid under the
17 terms of subsection (1)(a). If the claimant does not learn of a compensable condition under Title 39, chapter 72,
18 until after the time specified in either subsection (1)(a)(i) or (1)(a)(ii) has expired, the claimant shall file a claim
19 with the association within 1 year from the date the claimant knew or should have known that the claimant's
20 condition resulted from an occupational disease.

21 (ii) Notice by a claimant or insurer to the department of labor and industry of a workers' compensation
22 claim pursuant to Title 39, chapter 71, or an occupational disease claim pursuant to Title 39, chapter 72,
23 constitutes notice to the liquidator for the purposes of workers' compensation or occupational disease claims.

24 ~~(2)~~(3) The association may:

25 (a) employ or retain persons ~~as are~~ necessary to handle claims and perform other duties of the
26 association;

27 (b) borrow funds necessary to effect the purposes of this part in accord with the plan of operation;

28 (c) sue or be sued;

29 (d) negotiate and become a party to contracts ~~as are~~ necessary to carry out the purpose of this part;

30 (e) perform other acts ~~as are~~ necessary or proper to effectuate the purpose of this part;

1 (f) refund to the member insurers in proportion to the contribution of each member insurer to the
2 association that amount by which the assets of the association exceed the liabilities, if, at the end of any
3 calendar year, the board of directors finds that the assets of the association exceed the liabilities of the
4 association as estimated by the board of directors for the coming year."

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6 **NEW SECTION. Section 2. Applicability.** [This act] applies to all liquidations commenced on or after
7 [the effective date of this act].

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